

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 20238 of 2007(H)

AGAINST THE ORDER IN EA.94/2003,EA.1/2004 IN
OS.92/1992 of MUNSIF COURT,HARIPAD
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PETITIONER:

G.RADHAKRISHNAN, S/O.GOPALA PILLAI,
OTTETHU KANDATHIL HOUSE, MUTHUKULAM NORTH,
P.O.CHOOLATHERUV, ALAPPUZHA.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

1. KRISHNAKUMAR, S/O.SREEDHARAN PILLAI,
USHASSIL FROM SREERANGATH, MUTHUKULAM THEKKUM MURI
MUTHUKULAM VILLAGE.
2. RAJALEKSHMI, D/O.SARASWATHY,
VADAKOTTU KOICKAL, KOTTAKKAKAM MURI,
PALLIPAD VILLAGE.
3. UNNIKRISHNAN, S/O.SANKARAN NAIR,
THEKKOTIL VETTEL, MUTHUKULAM THEKKUM MURI,
MUTHUKULAM VILLAGE.

R1 & 2 BY ADV. SRI.G.ANANTHANARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE DECREE DT. 25.6.1993 IN O.S.92/92 OF THE MUNSIF COURT, HARIPAD

EXT.P2: -DO- OF THE ORDER DT.7.6.2007 IN E.A. 94/03 AND E.A.1/04 IN O.S.92/92, MUNSIF COURT, HARIPAD

RESPONDENTS' EXTS:

EXT.R1A: -DO- OF THE MEMORANDUM OF APPEAL IN RSA NO: 199/04 OF THE HONOURABLE HIGH COURT OF KERALA

EXT.R1B: -DO- OF THE DECREE IN A.S.169/93 OF THE ADDL. DIST. COURT, MAVELIKARA

jj

/TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 20238 OF 2007 H

Dated this the 23rd July, 2007.

JUDGMENT

This writ petition is filed against the order of the learned Munsiff, Haripad in E.A.94/03 & E.A.1/04 in O.S.92/92. E.A.94/03 was filed for prosecuting the 9th defendant in the suit and E.A.1/04 is filed by the very same decree holders against 9th defendant alleging that he had destroyed a coconut tree standing in the plaint schedule property by pouring kerosene on the top of it. These petitions were heard and disposed of whereby both the prayers were rejected but ultimately the court made an observation that "However by Ext.C1 commission report the decree holder has succeeded in proving that the nadavarambu which had a width of 3 feet at the time of passing of decree in O.S.92/92 was widened by partaking portions of plaint schedule item Nos:1 and 2 of properties. Therefore the decree holders are entitled to restore the nadavarambu and plaint schedule item Nos: 1 and 2 properties to its original position at the time of passing of the decree." I feel that the said observation and direction given by the court below is not in accordance with law. A decree is obtained against nine persons and if there is violation of the decree or one wants to execute the decree notice has to

be given to all the nine persons and they must be heard and thereafter alone that can be directed to do a particular act. I am informed that only the 9th defendant is made a party in the execution petition as well and therefore the said observation is without force and it is liable to be deleted. If the decree holder has got a case against the other defendants he must implead them as parties in the execution petition if it is already pending or otherwise he must file a fresh execution petition with a prayer and notice has to go and they must be heard and thereafter an order can be passed after hearing both sides. At the same time, as nobody has challenged the order passed against 9th defendant that has come conclusive as well. But whether 9th defendant is also bound to restore it to the original suit is a matter that can be considered while it is being dealt with other defendants after giving specific notice to them in that regard. Writ petition is allowed to that extent and disposed of as above.

M. N. KRISHNAN
Judge